

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

OBA LEE FRELIMO,

Petitioner,

v.

BHP MEMBERS, et al.,

Respondents.¹

No. 2:21-cv-0194 AC P

ORDER

Petitioner, a state prisoner proceeding pro se, seeks habeas relief pursuant to 28 U.S.C. § 2254. ECF No. 1. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 8, 2021, the court ordered petitioner to file an application to proceed in forma pauperis (“IFP”) or, in the alternative, to pay the filing fee in order to proceed with this action. Petitioner was given thirty days to do so, and he was sent an application to proceed in forma pauperis. See generally ECF No. 6.

On March 8, 2021, petitioner filed an “affidavit.” See ECF No. 7. In it, petitioner writes in part that he is unable to pay the filing fee and that in any event, his sentence is illegal because

¹ The court notes for the record that petitioner is currently housed at California State Prison - Sacramento. See ECF No. 1 at 1. Jeff Lynch is the current acting warden at that facility. Therefore, the court shall direct the Clerk of Court to substitute his name as the respondent in this matter in lieu of “BHP Members, et al.”. See Brittingham v. United States, 982 F.2d 378, 379 (9th Cir. 1992) (citation omitted) (stating proper respondent in federal habeas corpus petition is petitioner’s immediate custodian).

1 he was a juvenile at the time of sentencing. See id. at 1. Petitioner asks the court to order his
2 immediate release from prison. See ECF No. 7.


3 Petitioner's affidavit does not provide the required information in support of his IFP
4 application. The court will not consider any matters related to petitioner's custodial status unless
5 he first submits a completed IFP application or pays the filing fee. Petitioner will be provided a
6 final opportunity to pay the filing fee or submit an in forma pauperis application that includes all
7 required information. **If petitioner does not pay the fee or submit a properly completed IFP**
8 **application within thirty days, it will be recommended that his petition be dismissed.**

9 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court shall:

- 10 1. Change respondent's name from "BHP Members, et. al." to "Jeff Lynch, Acting
11 Warden" in the case caption of the docket, and
- 12 2. Send petitioner a second copy of the in forma pauperis application form used by this
13 district.

14 IT IS FURTHER ORDERED that within thirty days of the date of this order, petitioner
15 shall either file a completed application to proceed in forma pauperis or pay the appropriate filing
16 fee.

17 DATED: March 10, 2021

18 
19 ALLISON CLAIRE
20 UNITED STATES MAGISTRATE JUDGE
21
22
23
24
25
26
27
28